IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRI. APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 285 OF 1989

Farukh Shaikh Mohammed,
At 38 Old Bazar, Kirkee, Pune. ... Appellant
(Ori.accuded No.1.)

v/s

The State of Maharashtra ... Respondent

Shri Prakash Naik for the appellant.

Shri B.H. Mehta, A.P.P. for the respondent.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 28TH APRIL, 2005

ORAL JUDGMENT (Per Kakade, J.):

1. The appellant has preferred this appeal against the judgment and order dated 30.3.1989 passed by the Addl. Sessions Judge, Pune, wherein he was convicted for having committed offence punishable under Sec. 302 read with Sec. 34 of the I.P.C. and was sentenced to suffer R.I. for life. His co-accused Nos. 2 & 3 were, however, acquitted of the said charge.

2. Deceased Wesley alias Ravikant, the son of complainant PW-1 Sarla Michael Quri, was studying in 10th standard at the time of the incident which took place on 29.10.1986 at Khadki. Accused Nos. 1 to 3 are

the members of a Cricket Club known as United Cricket Team and accused No.1 was the captain of the said team for the match that took place on 29.10.1986 at river bank between the United Cricket Team and Golden Friends Cricket Team, of which PW-2 Rakesh Shashikant Chaskar was the captain. In the course of the said match, dispute had arisen as to whether particular number of runs were made by Golden Friend Cricket Team. The victim deceased Wesley was sitting near one Baboo Swamy who was the scorer. The quarrel ensued on the point of keeping proper score and said Baboo Swamy was teased on that point. Deceased Wesley told the persons teasing Baboo Swamy not to do so. Thereupon 2-3 players from United Cricket Team rushed to scorer Baboo to assault him and deceased Wesley had intervened. Accused Nos. 1 and 2 had intervened and there was an exchange of fist blows. Wesley had then ran towards his house at Irani Chawl and as the play had stopped, the players of both the cricket teams had started returning to their houses in Khadki town. At that time, when they were returning home, Wesley came with the cricket stump in his hand and started assaulting accused Nos. 1 and 2. Accused No.3 then handed over an open knife to accused No.1 and accused No.1 had then dealt knife blows in succession on Wesley. One of these blows was given on the right side

of his neck and he fell on the ground with bleeding injury. Accused Nos.1 to 3 had then ran away. PW-8 had witnessed the incident and then called auto-ricksha of one Bhatia and Wesley was removed to Hospital. A girl from the neighbourhood of Irani chawl, where PW-1 Sarla Michael resides, had informed about this incident and she rushed to the scene of incident, but learning that he was removed to the hospital and, therefore, went to the hospital. In the said hospital, Wesley died. His dead body was then removed to the Sasoon Hospital and post-mortem was performed after inquest panchnams was prepared. Accused persons were arrested in due course on 30.10.1986 on which date accused No.3 volunteered to make a statement that he would point out the place where the knife was hidden and led police to the said place and accordingly the weapon of offence was recovered from that place under panchnama. Statements of other witnesses also came to be recorded and seized articles were sent to the C.A. whose report was received in due course of time and is part of the present record. On completion of the investigation, the chargesheet was sent to the Court of law. The learned Magistrate committed the case to the Court of Sessions. The lealrned Trial Judge framed charge for the offence punishable under Sec. 302 read with 34 of I.P.C.

against all the 3 accused persons, to which they pleaded not guilty. The defence of the accused is that of total denial of any criminal liability. The learned Trial Judge, on the basis of available evidence on record came to the conclusion that there was sufficient evidence available to bring home the guilt against the present appellant accused No.1 for commission of the offence punishable under Sec. 302 of the I.P.C. However, it was found that there was no evidence on record to arrain accused Nos. 2 and 3 and consequently they came to be acquitted. Hence the present appeal by the convicted accused No.1.

3. We have heard the learned counsel for the appellant as well as the learned A.G.P. We have also perused the entire evidence on record.

4. At the outset, it may be noted that it is the case of direct evidence in the sense that there are as many as 2 eye-witnesses to the incident i.e. PW-2 Rakesh and PW-8 Parmar supported by other circumstantial evidence on record.

. PW-2 Rakesh knew accused Nos. 1 to 3 as well as deceased Welsley. According to him, there was Golden

Friends Cricket Club at Khadki and he was captain of the said cricket team in 1986. In his evidence he has further testified to the details as to how cricket match started between two teams and how dispose arose regarding score of the runs made by the concerned players. He has stated that Wesley was merely a spectator to the match and sitting near one Baboo Swamy who was keeping the score. When the dispute arose and the members of the rival United Cricket Team started teasing Baboo. Wesley did not like it and expressed his displeasure about it. He also rescued Baboo from the assault from the rival team persons. There was scuffle between the parties in which course deceased Wesley ran towards his house and came with a sump in his hand while other players were returning home disrupting the match. According to him, Wesley started assaulting accused Nos. 1 and 2 with that stump. Accused No.3 then then handed over an open knife to the assucsed No.1 who dealt 9 blows on the right shoulder of the deceased Wesley as a result of which he fell down as he had suffered bleeding injury. Some persons from the nearby Irani chawl then leifted Wesley l and removed to the hospital where he died. This version is again supported by the testimony of PW-8 Parmar who is resident of nearby chawl and has stated that at the relevant time he had gone to his

house for taking meals at which time he heard commotion and saw that crowd had gathered nearby and, therefore, when he came near the ground he saw that accused No.1 had knife in his hand and accused Nos. 2 and 3 were assaulting Wesley with fist and blows. The witness saw that the accused No.1 had dealt a knife blow on the left buttock of Wesley and shouted not to do so but accused No.1 dealt a knife blow on Wesley when Wesley had raised his left hand towards off that blow. Wesley had then suffered knife injury due to that blow. Thereafter accused No.1 dealt with another knife blow at the right side coller bone of Wesley resulting in bleeding injury, Wesley collapsed and accused ran away.

. Version of this witness leaves no doubt whatsoever that accused No.1 actually dealt knife blows on Wesley as a result of which ultimately he died. The learned counsel for the appellant ultimately urged that PW-2 Rakesh is a interested witness as he was team member of the rival Golden Friend Cricket Team and whereas accused persons were belonging to United Cricket Team and, therefore, his evidence cannot be relied upon. However, it must be noted that the witness PW-8 Parmar is an independent witness and has fully corroborated the version given by Rakesh and, therefore, we have no doubt

whatsoever that evidence of PW-2 as well as PW-8 Parmar is reliable and trustworthyin order to hold that the accused No.1 the assailant in this case.

5. The circumstantial evidence includes the medical evidence on record which is testified to by the medical officer PW-5 as well as medical officer PW-6 who has performed the post-mortem of the body of the deceased vide his notes Exh.27. The C.A. report Exh.33 is also supportive of the prosecution case to the effect that bloos stained clothes of the deceased were seized under panchnama.

6. Suffice it to say, therefore, that the prosecution has succeeded in establishing the fact that, at the relevant time and place, appellant accused No.1 assaulted deceased Wesley with knife as a result of which it is seen that exernal injury No.1 coupled with corresponding injuries were sufficient in the ordinary course of nature to cause death. The cause of external injury Nos. 1 to 5 was due to sharp cutting instrument, such as, knife Art.No.5. According to the medical officer, death would be immediate on sustaining external injury No.1. Therefore, we have no hesitation to hold that accused No.1 is the author of the crime. In this

casek it may also be noted that the learned Trial Judge has acquitted accused Nos. 2 and 3 for want of sufficient evidence and, therefore, we have no reason to take into account the alleged role attributed to them in the course of the incident.

7. The learned counsel for the appellant further urged that taking into consideration the nature of the assault and surrounding circumstances, it can be seen that accused No.1 had no intention to kill Wesley and the quarrel irrupted suddenly between the parties after disruption of the cricket match due to dispute regarding maintaining the score board. It was further urged that it was in fact deceased who had returned from his home with cricket stump and had actually assaulted accused Nos. 1 and 2 when accused No.3 allegedly handed over a knife to accused No.1 when he (accused No.1) assaulted Wesley with knife blows. We have given our anxious consideration to the entire scenerio. It may be noted that even though the evidence is not sufficient to support the theory of the defence on behalf of accused persons regarding right of self-defence, but circumstances indeed show that, in fact deceased Wesley had attacked accused persons with weapon i.e. stump and when that assault was started, accused No.3 evidently

handed over knife to accused No.1 obviously to facilitate his defence against the assault by deceased and that unfortunate incident of assault happened. Therefore, in our view, it is clear that there was no apparent intention in the mind of accused No.1 to kill the deceased because he was not even armed with any weapon when deceased started assaulting him with stump. It is also found that it was in hit of the moment that accused No.1 assaulted deceased with knife which was handed over to him by accused No.3 in order to save himself. This aspect, in our view, would necessarily bring the case within the four corners of Sec. 304 Part II as it is apparent from the evidence on record that the assault was committed by the appellant with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. Therefore, we hold that the offence committed by the appellant can be classified under Sec. 304 Part II of Indian Penal Code.

8. The learned counsel for the appellant thereafter urged for leniency against the appellant. It was submitted that the incident had taken place as early as in the month of October, 1986, whereas he was convicted by the Trial Court in the month of March, 1989 and the

appeal against the said order is being heard in April, 2005. It was further submitted that the appellant was hardly 19 years' old at the relevant time and the overtact attributed to him occurred in the course of quarrel between two cricket teams and, therefore, he deserves leniency. It was also submitted that, since then he had married and has children as well as his parents at his home to look after. He is the only bread winner in the family. Further it was submitted that there was no criminal record prior to the incident as well as during the last past 19 years after the stray and unfortunate incident took place. Having considered all these aspects, we thought it fit to call for the report of the District Probation Officer with regard to the appellant. Accordingly the District Probation Officer has filed his report which is part of the record. The Probation Officer as well as the concerned police station have reiterated that since the date of incident there is no criminal activity which could be attributed to the appellant. After release from the jail on bail, he is working as a technician with the cable network operator and is also plying autorickshaw during night time in order to earn his livelihood. He is also seen to be the only bread winner of his family consisting of his wife, children and old parents. The

District Probation Officer has also reported that he was satisfied after detailed enquiry in the neighbourhood that the appellant has repented his act and appears to be a person fit for consideration to give benefit under the Probation of Offenders Act. After due consideration, we are inclined to accept the report.

. It may further be noted that, while calling for the report of the District Probation Officer regarding the appellant, we also directed the District Probation Officer to make the report regarding present status and condition of the mother of the deceased i.e. the complainant in this case. Accordingly, the report is received. It is seen that complainant Smt. Sarla Michael Quri is 67 years old and devastated due to death of her only son. She was also suffering from blood pressure, diabetis, heart problem as well as gases and requires medical expenses. She gets monthly income of Rs.1,500/- from the saving left behind by her deceased husband who died due to shock of death of his only son i.e. deceased in the present case. It is also reported that said complainant Smt. Sarla lives alone and her elder son lives separately and she requires constant attention as well as finances. In view of the facts and circumstances, we are inclined to hold that, it would be

in fitness of things if the present appellant pays compensation to the poor lady whose only son was killed at the hands of the appellant, vide provision under Sec. 5 of the Probation of Offenders Act, 1958. So far as the quantum of compensation is concerned, we hold that the amount of Rs.50,000/- would be just and proper amount for compensation to the old lady taking into consideration her present status, requirements as well as age. Hence the following order :-

O R D E R

(1) The appeal is partly allowed.

(2) The Judgment and order dated 30.3.1989 passed by the Additional Sessions Judge, Pune, in Sessions Case No. 123 of 1988 convicting the appellant/original accused No.1 for commission of the offence punishable under Sec. 302 of the Indian Penal code and sentincing him to suffer imprisonment for life is set aside.

(3) The appellant is convicted for commission of the offence punishable under Sec. 304 Part II of the Indian Penal Code and instead of sentencing him to suffer the sentence immediately, it is directed that he shall be

released on probation bond for good conduct for a period of three years with one surety in the sum of Rs.25,000/- with condition that he shall appear and undergo sentence when called upon during the said period and shall in the meantime keep peace and observe good behaviour.

. It is also further directed that the appellant shall remain under the active supervision of the District Probation Officer, Pune, during the aforesaid period of three years and shall observe the directions and conditions of the bond of good conduct to be furnished by him.

. The bail bond of the appellant, furnished during the course of the appeal, stands cancelled.

3. It is further directed that the appellant shall pay compensation of Rs.50,000/- (Rupees Fifty thousand only) to the mother of the victim in this case Smt. Sarla Michael Quri, resident of Pune, whose report is on record, within a period of two weeks.

4. Office to forward the copies of this order to the Khadki Police Station, Pune, as well as the District Probation Officer, Pune, for necessary compliance.

5. The appellant to furnish the bond under Section 4 of the Probation of Offenders Act, 1958 before the Sessions Court at Pune within a period of one week.

6. All concerned to act on the authenticated copy of this order.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)